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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN JOSE DIVISION**

JOHN VOTTO, Derivatively on Behalf of  
APPLE INC.,

Plaintiff,

v.

TIMOTHY D. COOK, ARTHUR D.  
LEVINSON, JAMES A. BELL, ALBERT  
GORE, JR., ANDREA JUNG, RONALD D.  
SUGAR, SUSAN L. WAGNER, ROBERT  
A. IGER, and LUCA MAESTRI,

Defendants,

-and-

APPLE INC.,

Nominal Defendant.

) Case No.:

) **VERIFIED STOCKHOLDER**

) **DERIVATIVE COMPLAINT FOR**

) **BREACH OF FIDUCIARY DUTY AND**

) **VIOLATION OF THE FEDERAL**

) **SECURITIES LAWS**

) **JURY TRIAL DEMANDED**

1 Plaintiff John Votto (“Plaintiff”), by and through his undersigned counsel, derivatively on  
 2 behalf of Nominal Defendant Apple Inc. (“Apple” or the “Company”), submits this Verified  
 3 Shareholder Derivative Complaint (the “Complaint”). Plaintiff’s allegations are based upon his  
 4 personal knowledge as to himself and his own acts, and upon information and belief, developed  
 5 from the investigation and analysis by Plaintiff’s counsel, including a review of publicly available  
 6 information, including filings by Apple with the U.S. Securities and Exchange Commission  
 7 (“SEC”), press releases, news reports, analyst reports, investor conference transcripts, publicly  
 8 available filings in lawsuits, and matters of public record.

### 9 **NATURE OF THE ACTION**

10 1. This is a shareholder derivative action brought in the right, and for the benefit, of  
 11 Apple against certain of its officers and directors seeking to remedy Defendants’ violations of state  
 12 and federal law that have occurred from August 1, 2017 through January 2, 2019 (the “Relevant  
 13 Period”) and have caused, and continue to cause, substantial harm to Apple, including monetary  
 14 losses and damages to Apple’s reputation and goodwill.

15 2. Apple is a multinational technology company that designs, develops, and sells  
 16 consumer electronics and software in the U.S. and abroad. Apple’s flagship product is its iPhone,  
 17 accounting for nearly two-thirds of the Company’s revenues since 2007. Apple sells the iPhone  
 18 throughout the world, including in Greater China, its third-largest market segment behind the  
 19 Americas and Europe.<sup>1</sup>

20 3. During the Relevant Period, the Defendants (defined below) misrepresented and/or  
 21 failed to disclose multiple material factors that negatively impacted Apple’s iPhone sales and  
 22 revenues, including that, *inter alia*: (a) consumer demand for new iPhone models was negatively  
 23 impacted by Apple’s sales of heavily discounted battery replacement program for older iPhone  
 24 models, as customers chose not to upgrade or to delay same; (b) macroeconomic factors, including  
 25 an escalating trade war with the United States, increased competition from cheaper smartphones,

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26  
 27 <sup>1</sup> The Greater China segment includes China, Hong Kong and Taiwan. The Americas segment  
 28 includes both North and South America. The Europe segment includes European countries, as well  
 as India, the Middle East and Africa.

1 and a sluggish economy, were likely to negatively affect, and were doing so, Apple's iPhone sales  
2 in China; and (c) that as a result of the foregoing, the Defendants lacked a reasonable basis when  
3 issuing positive iPhone sales and revenue guidance for the first quarter of 2019, and when publicly  
4 denying the existence and negative impact of the foregoing.

5 4. Apple's wrongful conduct came to light on January 2, 2019, when the Company  
6 disclosed declining iPhone sales and was forced to reveal to investors that it would not meet the first  
7 quarter 2019 revenue guidance it had issued only two months earlier, the first instance of Apple  
8 having to reduce its revenue expectations in the past 16 years. Apple's Chief Executive Officer  
9 ("CEO"), Tim Cook, conceded that the declining sales were the result of users' decisions not to  
10 upgrade after receiving discount battery replacements, as well as economic issues in China, both  
11 issues of which Apple and the Defendants herein repeatedly denied to analysts and investors existed  
12 and/or would have a negative impact on sales.

13 5. On this news, the Company's share price fell approximately 9%, from \$157.92 on  
14 January 2, 2019 to \$142.19 on January 3, 2019, the first trading day after the disclosure, on  
15 exceedingly high trading volume of over 91 million shares.

16 6. In addition, based on the wrongful conduct discussed herein, numerous lawsuits were  
17 filed against Apple and certain of the Defendants and regulatory and governmental investigations  
18 were started in the United States and abroad.

#### 19 **JURISDICTION AND VENUE**

20 7. This Court has jurisdiction over federal claims/questions asserted in this action  
21 pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the remaining state law claims  
22 under 28 U.S.C. § 1367.

23 8. This Court has jurisdiction over each defendant named herein because each is either  
24 a corporation that conducts business in and maintains operations in this District, is an individual  
25 residing in this District, and/or is an individual non-resident who has sufficient minimum contacts  
26 with this District to render the exercise of jurisdiction by the District courts permissible under  
27 traditional notions of fair play and substantial justice.

9. Venue is proper in this Court in accordance with 28 U.S.C. §1391 because: (i) Apple maintains its principal place of business in this District; (ii) one or more of the Defendants either resides in or maintains offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including Defendants' primary participation in the wrongful acts detailed herein, occurred in this District; and (iv) Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

10. Moreover, a substantial portion of the transactions and wrongdoings that give rise to the claims asserted herein occurred in the County of Santa Clara, such that this action is properly assigned to the San Jose division of this Court.

### **PARTIES**

#### **Plaintiff**

11. Plaintiff is a current owner of Apple stock and has held the stock during the time of Defendants' continuous wrongful course of conduct alleged herein. Plaintiff will fairly and adequately represent the interests of the shareholders in enforcing the rights of the Company.

#### **Nominal Defendant**

12. Nominal Defendant Apple is a multinational technology company that designs, develops, and sells consumer electronics and software in the U.S. and abroad. Apple is incorporated in California with its principal offices located at One Apple Park Way, Cupertino, C.A. 95014. Apple's common stock trades on the NASDAQ under the ticker symbol "AAPL."

#### **Director Defendants**

13. *Defendant Timothy D. Cook* ("Cook") is, and was at all relevant times, CEO of the Company and a member of its Board of Directors (the "Board").

14. According to the Company's latest Form DEF 14A filed with the SEC on January 8, 2019 (the "2019 DEF 14A"), in fiscal year 2017, Defendant Cook received \$12,825,066 in total compensation from the Company, which included \$3,057,692 in salary, \$9,327,000 in non-equity incentive plan compensation, and \$440,374 in all other compensation. In fiscal year 2018, Cook received \$15,682,219 in total compensation from the Company, which included \$3,000,000 in

1 salary, \$12,000,000 in non-equity incentive plan compensation, and \$682,219 in all other  
2 compensation.

3 15. **Defendant Arthur D. Levinson** (“Levinson”) is and has been the Company’s  
4 Chairman of the Board since November 2011, has been a director since August 2000, and was the  
5 Company’s co-lead director from 2005 to November 2011. Defendant Levinson is a member of the  
6 Company’s Audit and Finance Committee.

7 16. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Levinson received  
8 \$567,188 in total compensation from the Company, which included \$300,000 in fees earned or paid  
9 in cash, \$249,961 in stock awards, and \$17,227 in all other compensation.

10 17. **Defendant James A. Bell** (“Bell”) has been a director of the Company since October  
11 2015 and is a member of the Audit and Finance Committee.

12 18. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Bell received  
13 \$362,665 in total compensation from the Company, which included \$100,000 in fees earned or paid  
14 in cash, \$249,961 in stock awards, and \$12,704 in all other compensation.

15 19. **Defendant Albert Gore, Jr.** (“Gore”) has been a director of the Company since  
16 March 2003 and is a member of the Nominating and Corporate Governance Committee and its  
17 Compensation Committee.

18 20. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Gore received  
19 \$358,543 in total compensation from the Company, which included \$100,000 in fees earned or paid  
20 in cash, \$249,961 in stock awards, and \$8,582 in all other compensation.

21 21. **Defendant Andrea Jung** (“Jung”) has been a director of the Company since January  
22 2008 and is a member of the Nominating and Corporate Governance Committee and the Chair of  
23 its Compensation Committee.

24 22. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Jung received  
25 \$403,106 in total compensation from the Company, which included \$130,000 in fees earned or paid  
26 in cash, \$249,961 in stock awards, and \$23,145 in all other compensation.

27 23. **Defendant Ronald D. Sugar** (“Sugar”) has been a director of the Company since  
28 November 2010 and is the Chair of the Audit and Finance Committee.

24. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Sugar received \$409,461 in total compensation from the Company, which included \$135,000 in fees earned or paid in cash, \$249,961 in stock awards, and \$24,500 in all other compensation.

25. ***Defendant Susan L. Wagner*** (“Wagner”) has been a director of the Company since July 2014 and is a member of the Audit and Finance Committee.

26. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Wagner received \$353,181 in total compensation from the Company, which included \$100,000 in fees earned or paid in cash, \$249,961 in stock awards, and \$3,220 in all other compensation.

27. Defendants Cook, Levinson, Bell, Gore, Jung, Sugar, and Wagner are collectively referred to herein as the “Director Defendants.”

#### **Former Director Defendant**

28. ***Defendant Robert A. Iger*** (“Iger”) was a director of the Company from November 2011 until September 10, 2019, during the entirety of the Relevant Period. Prior to his departure, Defendant Iger was the Chair of the Nominating and Corporate Governance Committee and a member of its Compensation Committee.

29. According to the 2019 DEF 14A, in fiscal year 2018, Defendant Iger received \$377,881 in total compensation from the Company, which included \$125,000 in fees earned or paid in cash, \$249,961 in stock awards, and \$2,920 in all other compensation.

30. Defendant Iger is referred to herein as the “Former Director Defendant.”

31. Except as to issues of demand futility, for ease of reference, the Director Defendants and Former Director Defendant are collectively referred to herein as the “Director Defendants.”

#### **Officer Defendants**

32. ***Defendant Luca Maestri*** (“Maestri”) has been the Company’s Senior Vice President and Chief Financial Officer (“CFO”) since May 2014. Defendant Maestri was previously the Company’s Vice President and Corporate Controller from March 2013 to May 2014.

33. According to the 2019 DEF 14A, in fiscal year 2017, Maestri received \$24,141,615 in total compensation from the Company, which included \$1,019,231 in salary, \$3,109,000 in non-equity incentive plan compensation, and \$20,000,113 in stock awards. In fiscal year 2018, Maestri

1 received 26,509,692 in total compensation from the Company, which included \$1,000,000 in salary,  
2 \$4,000,000 in non-equity incentive plan compensation, and \$21,491,888 in stock awards.

3 34. Defendant Maestri is referred to herein as the “Officer Defendant.”

4 35. The Director Defendants (including, as discussed above, Defendant Iger) and Officer  
5 Defendant are collectively referred to herein as the “Defendants.”

6 **APPLE’S CORPORATE GOVERNANCE**

7 36. As members of Apple’s Board, the Director Defendants were held to the highest  
8 standards of honesty and integrity and charged with overseeing the Company’s business practices  
9 and policies and assuring its integrity.

10 37. The conduct of the Director Defendants complained of herein involves a knowing  
11 and culpable violation of their obligations as directors and officers of Apple, the absence of good  
12 faith on their part, and a reckless disregard for their duties to the Company and its investors that the  
13 Director Defendants were aware posed a risk of serious injury to the Company.

14 38. Apple’s Committees include only a Nominating and Corporate Governance  
15 Committee, an Audit and Finance Committee, and a Compensation Committee.

16 39. Apple has no Grievance Committee, Risk Committee, Corporate Compliance  
17 Committee, Ethics Committee, or Human Rights Committee, among other omitted Committees.

18 **DEFENDANTS’ FIDUCIARY OBLIGATIONS AND LEGAL RESPONSIBILITIES**

19 40. The Defendants, because of their positions with the Company (as directors and/or  
20 executive officers), possessed the power and authority to control the contents of Apple’s public SEC  
21 filings, statements to investors, and presentations to analysts and other market participants.

22 41. They were provided with copies of the Company’s reports, statements, and press  
23 releases alleged herein to be misleading prior to or shortly after their issuance, or knew and/or were  
24 responsible for their contents, and therefore had the ability and opportunity to prevent their issuance  
25 or cause them to be corrected. Because of their positions with the Company and their access to  
26 material non-public information available to them but not to the public, the Defendants knew that  
27 the adverse facts specified herein had not been disclosed to and were being concealed from the  
28 public and that the positive representations being made were then materially false and misleading.

1 They had an obligation to prevent the dissemination of such information and ensure its accuracy,  
2 under the federal securities laws and common law.

3 42. The Director Defendants especially, as members of Apple's Board, were held to the  
4 highest standards of honesty and integrity and charged with overseeing the Company's business  
5 practices and policies and assuring the integrity of its financial and business records.

6 43. By reason of their positions as directors of the Company, and because of their ability  
7 to control the business and corporate affairs of Apple, the Director Defendants owed Apple and its  
8 investors the fiduciary obligations of trust, loyalty, and good faith. The obligations required the  
9 Director Defendants to use their utmost abilities to control and manage Apple in an honest and  
10 lawful manner. The Director Defendants were and are required to act in furtherance of the best  
11 interests of Apple and its investors, including in the use and preservation of its property and assets  
12 (including goodwill).

13 44. In addition, as directors of a publicly held company, the Director Defendants had a  
14 duty to promptly disseminate accurate and truthful information with regard to the Company's  
15 operations, finances, and financial condition, as well as present and future business prospects, so  
16 that the market price of the Company's stock would be based on truthful and accurate information.

17 45. To discharge their duties, the Director Defendants were required to exercise  
18 reasonable and prudent supervision over the management, policies, practices, and controls of the  
19 affairs of the Company, including to:

20 (a) ensure that the Company complied with its legal obligations and  
21 requirements, including acting only within the scope of its legal authority and  
22 disseminating truthful and accurate statements to the SEC and the investing public;

23 (b) conduct the affairs of the Company in an efficient, businesslike manner so as  
24 to make it possible to provide the highest quality performance of its business, to  
25 avoid wasting the Company's assets, and to maximize the value of the Company's  
26 stock;

27 (c) properly and accurately guide investors and analysts as to the true financial  
28 condition of the Company at any given time, including making accurate statements



1 about the Company's business prospects, and ensuring that the Company maintained  
2 an adequate system of financial controls such that the Company's financial reporting  
3 would be true and accurate at all times;

4 (d) remain informed as to how Apple conducted its operations, and, upon receipt  
5 of notice or information of imprudent or unsound conditions or practices, make  
6 reasonable inquiries in connection therewith, take steps to correct such conditions or  
7 practices, and make such disclosures as necessary to comply with federal and state  
8 securities laws;

9 (e) ensure that the Company was operated in a diligent, honest, and prudent  
10 manner in compliance with all applicable federal, state and local laws, and rules and  
11 regulations; and

12 (f) ensure that all decisions were the product of independent business judgment  
13 and not the result of outside influences or entrenchment motives.

14 46. The conduct of the Defendants complained of herein involves a knowing and  
15 culpable violation of these obligations, the absence of good faith on their part, and a reckless  
16 disregard for their duties and legal obligations to the Company and its shareholders of which the  
17 Defendants were, or should have been, aware, and which posed a risk of serious injury to the  
18 Company.

19 47. The Defendants violated their obligations and/or duties by personally making and/or  
20 causing the Company to issue false and misleading statements regarding the Company's business  
21 prospects and key products. As a result, Apple has expended, and will continue to expend,  
22 significant sums of money related to regulatory investigations and private lawsuits in the U.S. and  
23 abroad.

#### 24 **SUBSTANTIVE ALLEGATIONS**

25 48. Apple released its first iPhone model in 2007. Since then, Apple has released more  
26 than fifteen new versions of its iPhone and the iPhone has become Apple's largest source of revenue  
27 by product type. In fiscal years 2017 and 2018, iPhone sales accounted for approximately 62% and  
28 63% of Apple's net sales, respectively.

1           49.     The Chinese market (Greater China) is Apple's third-largest market segment after  
2 the Americas and Europe, accounting for approximately 20% of Apple's total sales during its fiscal  
3 year 2018.

4           50.     Recent economic factors have threatened Apple's ability to maintain iPhone sales  
5 growth in China, including the emergence of substantially cheaper Chinese smartphone competitors,  
6 a growing trade war with the United States involving reciprocal tariffs on goods, and a significant  
7 slowdown of the Chinese economy.

8           51.     In addition, in 2017, Apple became involved in a widely publicized scandal where it  
9 was caught releasing operating system updates that purposefully (and secretly) slowed down, or  
10 "throttled," the performance of its older iPhone models. This had the likely intended effect of  
11 causing consumers to falsely believe that their older models were obsolete and that they needed to  
12 purchase newer iPhone models. In the short term, this artificially boosted sales of new iPhones  
13 during 2017, a fact that Apple touted to investors without explaining its true cause.

14           52.     After being caught sabotaging phones, the Defendants were forced to admit their  
15 (and the Company's) misconduct. Apple blamed the incident on its failed attempt to correct poor  
16 battery performance in its older model iPhones by limiting the phones' power consumption, with  
17 the effect of slowing down performance. Researchers and private investigators were not convinced  
18 by this excuse. Public outcry, lawsuits, and regulatory investigations in the United States and abroad  
19 followed.

20           53.     For example, since December 2017, iPhone owners worldwide have filed more than  
21 sixty consumer fraud lawsuits against Apple for allegedly throttling their phones and lying about it.  
22 Many of these cases have been filed as class actions in the United States and consolidated in the  
23 Northern District of California. *See In re Apple Inc. Device Performance Litigation*, 18-md-02827-  
24 EJD (N.D. Cal.).

25           54.     Plaintiffs there seek, among other things, appropriate injunctive relief, including an  
26 order requiring Apple to modify the iOS to prevent it from intentionally degrading the performance  
27 and battery life of the Subject iPhones; prohibiting Apple from throttling future iPhone models,  
28

1 particularly without the express consent of affected consumers; and requiring Apple to tell iPhone  
2 users that the iOS and iOS updates on the phones throttled the phones' performance.

3 55. These cases are ongoing after a motion to dismiss was denied in part.

4 56. In October 2018, Italy's antitrust regulator fined Apple 10 million Euros for hiding  
5 the truth regarding its throttling of iPhones.

6 57. Apple's most recent Form 10-K filed with the SEC on October 31, 2019 states:

7 Various civil litigation matters have been filed in state and federal courts in the U.S.  
8 and in various international jurisdictions alleging violation of consumer protection  
9 laws, fraud, computer intrusion and other causes of action related to the Company's  
10 performance management feature used in its iPhone operating systems, introduced  
11 to certain iPhones in iOS updates 10.2.1 and 11.2 [i.e., the throttling issues]. The  
12 claims seek monetary damages and other non-monetary relief. On April 5, 2018,  
13 several U.S. federal actions were consolidated through a Multidistrict Litigation  
14 process into a single action in the U.S. District Court for the Northern District of  
15 California. In addition to civil litigation, the Company is also responding to  
16 governmental investigations and requests for information relating to the performance  
17 management feature.

18 58. In the immediate aftermath of the "throttling" scandal, Apple attempted to repair its  
19 damaged reputation with consumers by offering them heavily discounted battery replacements for  
20 its older iPhone models, dropping the price from \$79 to \$29 during 2018. This had the opposite  
21 effect as the throttling itself, of cannibalizing new iPhone sales as consumers waited to upgrade or  
22 stopped upgrading altogether, a fact that Apple refused to concede or acknowledge to investors.

#### 23 **DEFENDANTS' FALSE AND MISLEADING STATEMENTS**

24 59. During the Relevant Period, the Defendants, on behalf of Apple, touted record  
25 iPhone sales, while failing to attribute such sales to their unsustainable, non-organic cause: the  
26 temporary surge of customers who fell for Apple's "planned obsolescence" and purchased new  
27 iPhones rather than replacement batteries. These sales would soon be cannibalized by Apple's  
28 discounted battery replacement program. The Defendants also touted growing iPhone sales in China,  
while failing to acknowledge that such sales were threatened by macroeconomic conditions such as  
the escalating U.S.-China trade war, rise in cheap Chinese smartphones, and general decline in the  
Chinese economy. Even as analysts and investors asked pointed questions about these potential  
negative factors on future iPhone sales and attributable revenues, the Defendants denied the

1 existence of such factors or their negative impacts on sales and revenues. They also issued sales and  
2 revenue guidance that they knew, or should have known, lacked a legitimate basis and that  
3 ultimately needed to be significantly restated, costing the Company and its shareholders billions of  
4 dollars.

5 60. On August 1, 2017, Apple issued a press release and related data sheet regarding its  
6 financial results for its fiscal year 2017 third quarter ended July 1, 2017, which were appended as  
7 exhibits to a Form 8-K filed with the SEC that same day. During the third quarter, Apple reported a  
8 7% increase in year-over-year revenue. Apple also provided revenue guidance for the upcoming  
9 quarter of \$49 to \$52 billion.

10 61. The press release stated, in pertinent part:

11 The Company posted quarterly revenue of \$45.4 billion and quarterly earnings per  
12 diluted share of \$1.67. These results compare to revenue of \$42.4 billion and earnings  
13 per diluted share of \$1.42 in the year-ago quarter. International sales accounted for  
14 61 percent of the quarter's revenue.

15 "With revenue up 7 percent year-over-year, we're happy to report our third  
16 consecutive quarter of accelerating growth and an all-time quarterly record for  
17 Services revenue," said Tim Cook, Apple's CEO. "We hosted an incredibly  
18 successful Worldwide Developers Conference in June, and we're very excited about  
19 the advances in iOS, macOS, watchOS and tvOS coming this fall."

20 "***We reported unit and revenue growth in all our product categories in the June***  
21 ***quarter***, driving 17 percent growth in earnings per share," said Luca Maestri, Apple's  
22 CFO. "We also returned \$11.7 billion to investors during the quarter, bringing  
23 cumulative capital returns under our program to almost \$223 billion."

24 62. The data sheet listed iPhone sales of 41.0 million units during the third quarter 2017,  
25 which was up from 40.4 million units sold in the same quarter of the previous year. Revenues from  
26 iPhone sales were \$24.8 billion, accounting for approximately 55% of the Company's total quarterly  
27 revenues of \$45.4 billion. Revenues from total sales in Greater China were \$8.0 billion, or  
28 approximately 18% of total global revenues (compared with 24% of revenues from European sales  
and 45% from sales in the Americas).

63. During a conference call with analysts held later that day, Defendant Cook discussed  
the "especially strong demand" for the newest iPhone models and noted that the upgrade rate for  
fiscal year 2017 was the "highest that we've seen." Defendant Cook attributed the high upgrade rate

1 to “a function of many, many different things,” including the “size of the installed base, the age of  
 2 the installed base, the product that is new at the time, the regional distribution, [and] the upgrade  
 3 plans that are in various markets around the world.” Notably, Defendant Cook did not mention  
 4 Apple’s undisclosed throttling of the performance of older iPhone models as one such factor, leading  
 5 investors to falsely believe that the strong iPhone demand and high upgrade rates were simply the  
 6 product of organic and sustainable market factors.

7 64. Defendant Maestri added that, “[a]mong customers planning to buy a smartphone,  
 8 purchase intention for iPhone was nearly three times the rate of our closest competitor.” As with  
 9 Defendant Cook, Defendant Maestri made no mention of throttling and its temporary boost in new  
 10 iPhone sales.

11 65. On November 2, 2017, Apple issued a press release and related data sheet regarding  
 12 its financial results for its fiscal year 2017 fourth quarter ended September 30, 2017, which were  
 13 appended as exhibits to a Form 8-K filed with the SEC that same day. During the fourth quarter,  
 14 Apple reported a 12% increase in year-over-year revenue. Apple also provided revenue guidance  
 15 for the upcoming quarter of \$84 to \$87 billion.

16 66. The press release stated, in pertinent part:

17 The Company posted quarterly revenue of \$52.6 billion, an increase of 12 percent  
 18 from the year-ago quarter, and quarterly earnings per diluted share of \$2.07, up 24  
 19 percent. International sales accounted for 62 percent of the quarter’s revenue.

20 “We’re happy to report a very strong finish to a great fiscal 2017, ***with record fourth***  
 21 ***quarter revenue, year-over-year growth for all our product categories***, and our best  
 22 quarter ever for Services,” said Tim Cook, Apple’s CEO. “With fantastic new  
 23 products including iPhone 8 and iPhone 8 Plus, Apple Watch Series 3, and Apple  
 24 TV 4K joining our product lineup, we’re looking forward to a great holiday season,  
 25 and with the launch of iPhone X getting underway right now, we couldn’t be more  
 26 excited as we begin to deliver our vision for the future with this stunning device.”

27 “Apple’s year-over-year revenue growth rate accelerated for the fourth consecutive  
 28 quarter and drove EPS growth of 24 percent in the September quarter,” said Luca  
 Maestri, Apple’s CFO. “We also generated strong operating cash flow of \$15.7  
 billion and returned \$11 billion to investors through our capital return program.”

67. The data sheet listed iPhone sales of 46.7 million units during the fourth quarter 2017,  
 which was up from 45.5 million units sold in the same quarter of the previous year. Revenues from

1 iPhone sales were \$28.8 billion, accounting for approximately 54.8% of the Company's total  
2 quarterly revenues of \$52.6 billion. Revenues from total sales in Greater China were \$9.8 billion, or  
3 approximately 19% of total global revenues.

4 68. During a conference call with analysts held later that day, Defendant Cook  
5 highlighted how 2017 was Apple's "biggest year ever in most parts of the world with all-time record  
6 revenue," including in China, and that there was "double-digit unit growth in iPhone, and both the  
7 upgraders and Android switchers were both up on a year-over-year basis during the quarter."

8 69. Defendant Maestri added that iPhone sales were up 3% over the prior year, with  
9 "very strong" interest in iPhones among consumers and business users, and that they were "very  
10 pleased to see double digit iPhone growth in many emerging markets, including mainland China . .  
11 . ." In addition, "[a]mong consumers planning to buy a smartphone in the next 90 days, purchase  
12 intention for iPhone was 69%, more than five times the rate of the closest competitor . . . ."

13 70. As with the prior earnings conference call, neither Defendant Cook nor Defendant  
14 Maestri mentioned the temporary boost in new iPhone sales and upgrades due to Apple's  
15 undisclosed throttling of the performance of older iPhone models.

16 71. On February 1, 2018, Apple issued a press release and related data sheet regarding  
17 its financial results for its fiscal year 2018 first quarter ended December 30, 2017, which were  
18 appended as exhibits to a Form 8-K filed with the SEC that same day. During the first quarter, Apple  
19 reported a 13% increase in year-over-year revenue, an "all-time record," and "the highest revenue  
20 ever from a new iPhone lineup." Apple also provided revenue guidance for the upcoming quarter of  
21 \$60 to \$62 billion.

22 72. The press release stated, in pertinent part:

23 The Company posted quarterly revenue of \$88.3 billion, an increase of 13 percent  
24 from the year-ago quarter and an all-time record, and quarterly earnings per diluted  
25 share of \$3.89, up 16 percent, also an all-time record. International sales accounted  
for 65 percent of the quarter's revenue.

26 "We're thrilled to report the biggest quarter in Apple's history, with broad-based  
27 growth that included the **highest revenue ever from a new iPhone lineup**. iPhone X  
surpassed our expectations and has been our top-selling iPhone every week since it  
28 shipped in November," said Tim Cook, Apple's CEO. "We've also achieved a

1 significant milestone with our active installed base of devices reaching 1.3 billion in  
 2 January. That's an increase of 30 percent in just two years, which is *a testament to*  
*the popularity of our products and the loyalty and satisfaction of our customers.*"

3 "*Thanks to great operational and business performance*, we achieved all-time  
 4 record profitability during the quarter, with EPS up 16 percent," said Luca Maestri,  
 5 Apple's CFO. "Cash flow from operations was very strong at \$28.3 billion, and we  
 returned \$14.5 billion to investors through our capital return program."

6 73. The data sheet listed iPhone sales of 77.3 million units during the first quarter 2018,  
 7 which was roughly flat from the same quarter of the previous year but was up 66% from the prior  
 8 sequential quarter. Revenues from iPhone sales were \$61.6 billion, accounting for approximately  
 9 70.0% of the Company's total quarterly revenues of \$88.3 billion. Revenues from total sales in  
 10 Greater China were \$18.0 billion, or approximately 20% of total global revenues.

11 74. During a conference call held on February 1, 2018, Defendant Cook attributed  
 12 Apple's "all-time high" active installed user base of 1.3 billion devices, and 30% growth in two  
 13 years, to "the strength and reliability of our products and our ecosystem as well as the loyalty,  
 14 satisfaction, and engagement of our customers." He did not attribute any of that growth to Apple's  
 15 throttling activities and planned obsolescence of older devices. Defendant Cook also boasted that  
 16 the iPhone "generated its highest revenue ever" and that "revenue for our newly launched iPhone  
 17 was the highest of any lineup in our history, driving total Apple revenue above our guidance range."

18 75. Defendant Maestri touted similar "all-time record" revenues, including "double-digit  
 19 growth in all our geographic segments, and all-time quarterly records in the vast majority of markets  
 20 we track," including Greater China. Defendant Maestri mentioned that the Company established  
 21 "all-time iPhone record revenues" across the globe, even as the average sales prices for new iPhone  
 22 models increased. "Customer interest and satisfaction with iPhone are very, very strong for both  
 23 consumers and business users," and the "iPhone loyalty rate" among customers was "the highest  
 24 ever measured." As with Defendant Cook, Defendant Maestri failed to mention the throttling issue.

25 76. During the call, analyst Kathryn Huberty of Morgan Stanley asked about future  
 26 iPhone demand in light of the Company's relatively low revenue guidance, and whether that was  
 27 related to the "*decay of demand around the higher-priced products, or any impact that you might*  
 28 *be seeing from the lower-priced battery replacements or anything else in the market.*"



77. Defendant Maestri responded that “maybe the two most important messages are that we believe iPhone revenue will grow double digits as compared to last year during the March quarter, and also and importantly that iPhone sell-through growth on a year-over-year basis, would be actually accelerating during the March quarter as compared to the December quarter.” Defendant Maestri did not address the battery replacement issue or mention the Chinese economy, and only tangentially addressed the high average sale price issue by noting that it would decrease overall as inventories of higher priced, newer iPhone models reduced.

78. Analyst Antonio M. Sacconaghi of Sanford Bernstein followed up with a slightly more pointed question as to whether investors should be worried that the iPhone upgrade rate is going to decrease as consumers wait longer to replace older models, including as a result of the discount battery replacement program announced as a result of the throttling scandal:

Yes, thank you. I have a question and a follow-up. You commented on how your installed base over the last couple of years has grown 30%, and iPhone is clearly the largest component of that, and so iPhone's installed base is probably growing close to that number, perhaps less. Let's call it 20% or 25. Yet if we look at iPhone unit growth for Fiscal '18, sort of what's implied with your guidance, Fiscal '17 and Fiscal '16, it's been relatively flat. *So you have an installed base that's 20+% higher and a unit growth that's relatively flat, which would suggest that your upgrade rate is going down or your replacement cycle is elongating. I'm wondering whether you agree with that and whether investors should be worried about that.*

Maybe if I could just add one other wrinkle to potentially get your response on is, *given consumers' heightened awareness of their ability to replace batteries going forward as opposed to upgrade, isn't that also something that investors should potentially be concerned about in terms of its impact on upgrade rates going forward? ....*

79. Defendant Cook responded by largely punting on the question, and noting that the iPhone's reliability is “fantastic,” which creates a better market for previously owned phones, and that the most important metric is the number of active devices – the “more people on iPhones, the better.” However, after being pressed some more, he stated that Apple “*did not consider in any way, shape, or form what [the battery replacement program] would do to upgrade rates.*”

80. Analyst Amit Daryanani from RBC Capital Markets asked about the “underlying trends” for growth in China, which seemed flat. Defendant Cook responded that “even though we’re



1 reporting similar year-over-year growth for China, if you change that reporting to an average weekly  
 2 sales, which is probably a much better way to look at it, there was actually a nice acceleration . . .  
 3 year over year.” Defendant Cook added that, as a result of record iPhone sales in China, “[w]e could  
 4 not be more pleased with how we’re doing [there],” and “I feel really good about how we’re doing  
 5 in China.”

6 81. Market reports following the earnings release noted that the flat year-over-year  
 7 iPhone sales were troubling to investors, and that while revenues had increased substantially, that  
 8 was mostly due to increased unit prices rather than increased unit demand. More troubling, perhaps,  
 9 was the relatively low revenue guidance. An article posted the next day on CNN Business’s website  
 10 stated, in pertinent part:

11 Apple’s week went from bad to worse.

12 The company’s stock fell more than 4% on Friday. Apple released strong earnings  
 13 results on Thursday but failed to fully dispel lingering concerns about iPhone  
 14 demand.

15 \* \* \*

16 The weaker sales forecast and slight dip in iPhones sold fuel lingering investor  
 17 concerns about demand for Apple’s current iPhone lineup, including the \$999 iPhone  
 X model and the more affordable iPhone 8 and 8 Plus.

18 “From our perspective, the quarter was a mixed bag,” Sherri Scribner, an analyst with  
 19 Duetsche Bank, wrote in an investor note after the earnings results were released  
 20 Thursday.

21 Related: How will Apple create its media empire?

22 The questionable iPhone demand was offset to some extent by a surge in the average  
 23 price of each iPhone sold . . . .

24 82. On May 1, 2018, Apple issued a press release and related data sheet regarding its  
 25 financial results for its fiscal year 2018 second quarter ended March 31, 2018, which were appended  
 26 as exhibits to a Form 8-K filed with the SEC that same day. During the second quarter, Apple  
 27 reported a 16% increase in year-over-year revenue, representing the Company’s “best March quarter  
 28 ever, with strong revenue growth in iPhone” and across geographic segments, including “over 20%

1 growth in Greater China and Japan.” Apple also provided revenue guidance for the upcoming  
2 quarter of \$51.5 billion to \$53.5 billion.

3 83. The press release stated, in pertinent part:

4 The Company posted quarterly revenue of \$61.1 billion, an increase of 16 percent  
5 from the year-ago quarter, and quarterly earnings per diluted share of \$2.73, up 30  
6 percent. International sales accounted for 65 percent of the quarter’s revenue.

7 “We’re thrilled to report our best March quarter ever, with strong revenue growth in  
8 iPhone, Services and Wearables,” said Tim Cook, Apple’s CEO. “Customers chose  
9 iPhone X more than any other iPhone each week in the March quarter, just as they  
did following its launch in the December quarter. We also grew revenue in all of our  
geographic segments, with over 20% growth in Greater China and Japan.”

10 “Our business performed extremely well during the March quarter, as we grew  
11 earnings per share by 30 percent and generated over \$15 billion in operating cash  
12 flow,” said Luca Maestri, Apple’s CFO. “With the greater flexibility we now have  
13 from access to our global cash, we can more efficiently invest in our US operations  
14 and work toward a more optimal capital structure. Given our confidence in Apple’s  
future, we are very happy to announce that our Board has approved a new \$100  
billion share repurchase authorization and a 16 percent increase in our quarterly  
dividend.”

15 84. The data sheet listed iPhone sales of 52.2 million units during the second quarter  
16 2018, which was down 32% from the prior sequential quarter. Revenues from iPhone sales were  
17 \$38.0 billion, accounting for approximately 62% of the Company’s total quarterly revenues of \$61.1  
18 billion. Revenues from total sales in Greater China were \$13.0 billion, or approximately 21% of  
19 total global revenues.

20 85. During a conference call with analysts held later that day, Defendant Cook touted  
21 that Apple “grew in each of our geographic segments, and in Greater China and Japan, revenue was  
22 up more than 20%.” He also stated that “iPhone’s second quarter performance capped a tremendous  
23 fiscal first half, with \$100 billion in iPhone revenue, an increase of \$12 billion over last year, setting  
24 a new first half record and achieving our highest first half growth rate in three years.”

25 86. Defendant Maestri highlighted “very strong” performance in emerging markets,  
26 including “21% year-over-year growth in Greater China, our strongest growth rate from that  
27 segment in ten quarters.”  
28

1           87. Analyst Shannon Cross of Cross Research asked Defendant Cook about the  
2 sustainability of iPhone sales, given the high price per unit of the latest models:

3           Thank you very much. I wanted to ask about your thoughts on sort of iPhone and  
4 positioning now that we're a couple of quarters out from the launch of the iPhone X.  
5 Given the \$1,000.00 price point, and *it's clearly selling, but there's been a lot of*  
6 *questions in the market about the sustainability of that price point* and how you're  
7 thinking about it as you look out sort of holistically across your lineup. So, if you  
8 could talk a bit about what you're hearing from your customers on that, and then I  
9 have a follow up. Thank you.

10           88. Defendant Cook responded by repeating metrics about the *current* customer demand  
11 for the iPhone X, rather than what that demand may be in the future. He did not mention whether or  
12 how the high price of the current iPhone model would contrast with the discounted battery  
13 replacements Apple was forced to offer customers in the wake of its throttling scandal, or with  
14 cheaper competitor phones emerging in China, especially as the escalating trade war between the  
15 United States and China was likely to increase the relative cost of U.S. goods abroad.

16           89. Analyst Katy Huberty of Morgan Stanley asked Defendant Cook about the “threat of  
17 a trade war with China” threatened to slow down Apple’s future iPhone sales. Huberty also asked  
18 whether Apple was taking any steps to “pre-empt any risk of tariffs going forward.”

19           90. Defendant Cook responded that he believed the United States and China had a  
20 mutuality of interests that “bind the countries together, and [he was] actually very optimistic” that  
21 there would be no great economic animosity going forward. He also stated that Apple’s “focus” was  
22 on how the two countries can “both win and grow the pie, not just allocate it differently.” He did  
23 not mention any steps Apple was taking to pre-empt the risks of tariffs in the future.

24           91. Analyst Brian White of Monness, Crespi, Hardt & Co. asked a follow up question to  
25 Defendant Cook about Apple’s future growth in China:

26           Yes. Tim, I think there's -- China numbers are actually phenomenal in the quarter  
27 and third consecutive quarter of growth. *I think there's been a lot of concerns, just*  
28 *Apple in China and maybe misinformation out there.* But what do you see as the  
drivers for Apple in both Mainland China and Greater China over the next few years?

....

1 92. Tim Cook responded that although he had “read some notes here and there about the  
2 market [in China] not being good,” his “personal view of China is that it’s a great market,” and the  
3 Company felt “very bullish” on the future opportunity and economic environment in China.

4 On the market side, we've seen iPhone X, as I had mentioned before, as being the top  
5 selling smartphone during the quarter. We gained share during the quarter. ***I read***  
6 ***some notes here and there about the market itself not being good.*** I think on any  
7 kind of -- on a 90-day clock, lots of different things can happen. ***But my own***  
8 ***personal view of China is that it's a great market, and I would -- we are certainly***  
9 ***looking far beyond 90 days and feel very bullish on the opportunity and the***  
10 ***environment there.*** I would say that the market for us is more than iPhone. The Mac  
gained share there as well. The Watch is getting some traction there. Services is doing  
extremely well. And so, it has several catalysts, and I'm very pleased with the results  
that we were able to show during the quarter.

11 93. Analyst Jim Suva of Citigroup asked whether the iPhone market was “saturated” or  
12 whether there was still room for growth. Defendant Cook responded that Apple’s focus is to  
13 convince consumers with other companies’ smartphones to switch to iPhone, and to take care of  
14 current iPhone users so that when they elect to buy another phone, the buy another iPhone.  
15 Defendant Cook did not mention whether or how this strategy was being employed when Apple  
16 throttled iPhone users’ phones, or how the Company planned to convince those users to stick with  
17 Apple in the future. Defendant Cook also did not address whether the discounted battery  
18 replacement program would make it less likely for current iPhone users to “elect to buy another  
19 phone.”

20 In terms of the iPhone itself, even though we sell quite a few phones across the course  
21 of a year, our market share globally is low compared to the -- our sales are low  
22 compared to the full market of smartphones. ***And so, our task is to convince people***  
23 ***that currently or have another type of phone to switch, while really taking care of***  
24 ***people that have an iPhone so that they choose -- when they elect to buy another***  
25 ***phone, that they buy another iPhone.*** And so, we've spent quite a bit of time on that,  
as you might guess. . . .

26 And so, I do think -- I don't buy the view that the market's saturated. I don't see that  
27 from a market point of view, or -- and certainly not from an iPhone point of view. ***I***  
28 ***think the smartphone market is sort of like the best market for a consumer product***  
***company in the history of the world,*** and so, that's how I feel about it. It's a terrific  
market, and we're very happy to be a part of it.

1           94.     On July 31, 2018, Apple issued a press release and related data sheet regarding its  
2 financial results for its fiscal year 2018 third quarter ended June 30, 2018, which were appended as  
3 exhibits to a Form 8-K filed with the SEC that same day. During the third quarter, Apple reported a  
4 17% increase in year-over-year revenue, representing the Company's "best June quarter ever,"  
5 which was "driven by continued strong sales of iPhone, Services and Wearables." Apple also  
6 provided revenue guidance for the upcoming quarter of \$60 billion to \$62 billion.

7           95.     The press release stated, in pertinent part:

8           The Company posted quarterly revenue of \$53.3 billion, an increase of 17 percent  
9 from the year-ago quarter, and quarterly earnings per diluted share of \$2.34, up 40  
10 percent. International sales accounted for 60 percent of the quarter's revenue.

11           "We're thrilled to report Apple's best June quarter ever, and our fourth consecutive  
12 quarter of double-digit revenue growth," said Tim Cook, Apple's CEO. "Our Q3  
13 results were driven by continued strong sales of iPhone, Services and Wearables, and  
14 we are very excited about the products and services in our pipeline."

15           "Our strong business performance drove revenue growth in each of our geographic  
16 segments, net income of \$11.5 billion, and operating cash flow of \$14.5 billion," said  
17 Luca Maestri, Apple's CFO. "We returned almost \$25 billion to investors through  
18 our capital return program during the quarter, including \$20 billion in share  
19 repurchases."

20           96.     The data sheet listed iPhone sales of 41.3 million units during the third quarter 2018,  
21 which was down 21% from the prior sequential quarter. Revenues from iPhone sales were \$29.9  
22 billion, accounting for approximately 56% of the Company's total quarterly revenues of \$53.3  
23 billion. Revenues from total sales in Greater China were \$9.6 billion, or approximately 18% of total  
24 global revenues.

25           97.     During a conference call with analysts held later that day, analyst Shannon Cross of  
26 Cross Research asked Defendant Cook whether a trade war between the United States and China  
27 could negatively impact future Apple product sales there.

28           98.     Defendant Cook responded by touting Apple's "double-digit growth in Greater  
China," especially in iPhone sales. He acknowledged that, in terms of tariffs, "I'm sure a lot of  
people have questions on this," and that Apple views tariffs as a negative that imposes a "tax on the  
consumer and wind[s] up resulting in lower economic growth" and other unintended consequences.

1 However, Defendant Cook noted that “none of our products were directly affected by the tariffs.”  
 2 He also maintained his optimism about future prospects in China:

3 *All of this said we're optimistic, as I've been the whole time that this will get sorted*  
 4 *out.* Because there's an inescapable mutuality between the US and China that sort of  
 5 serves as a magnet to bring both countries together. Each country can only prosper  
 6 if the other does. And of course, the world needs both the US and China to prosper  
 7 for the world to do well. With that said, *I can't predict the future but I am optimistic*  
 8 *that the countries will get through this. And we are hoping that calm heads prevail.*

9 99. Analyst Toni Sacconaghi asked Defendant Maestri to provide some additional  
 10 guidance on Q4 iPhone sales prices. Defendant Maestri responded that the Company does not  
 11 provide such granular guidance but did release guidance on revenues that showed growth of 16% to  
 12 19%. “We expect the growth to come from strong growth from iPhone, from services, and from  
 13 wearables....”

14 100. Analyst Sacconaghi followed up with a question for Defendant Cook about the  
 15 general “health of the smartphone market” and iPhone market, considering that iPhone unites had  
 16 been “relatively flat for four years” and “at least at the high end the market is perhaps flat to down.”  
 17 Sacconaghi also asked, more pointedly, about what might be happening with “replacement cycles,”  
 18 specifically, “what impact, if any, you’ve seen from wider availability and less expensive  
 19 replacement batteries for iPhones.”

20 101. Defendant Cook responded that “the smartphone market is very healthy.” On the  
 21 issue of replacement cycles, Defendant Cook noted that “some replacement cycles are lengthening,”  
 22 but he did not attribute that to the discounted battery replacement program. Instead, he stated that  
 23 “the major catalyst for that was probably the subsidy plans becoming a much smaller percentage of  
 24 total sales around the world than they were at one time.” Defendant Cook did not cite the discounted  
 25 battery replacement program as attributing to the lengthening replacement cycles, and he essentially  
 26 refused to acknowledge the analyst’s concern, maintaining that Apple was unconcerned with that  
 27 potentiality.

28 In terms of batteries, *we have never done an analysis internally about how many*  
*people decided to get a lower priced battery than buying another phone because it*  
*was never about that for us.* It was always about doing something great for the user.



1 And I think if you treat the users and the customers well, then you have a good  
2 business over time. That's how we look at that.

3 102. On November 1, 2018, Apple issued a press release and related data sheet regarding  
4 its financial results for its fiscal year 2018 fourth quarter ended September 29, 2018, which were  
5 appended as exhibits to a Form 8-K filed with the SEC that same day. During the third quarter,  
6 Apple reported a 20% increase in year-over-year revenue, the “best September quarter ever” and  
7 “the strongest revenue and earnings in Apple’s history.” Apple also provided revenue guidance for  
8 the upcoming quarter of \$89 billion to \$93 billion.

9 103. The press release stated, in pertinent part:

10 The Company posted quarterly revenue of \$62.9 billion, an increase of 20 percent  
11 from the year-ago quarter, and quarterly earnings per diluted share of \$2.91, up 41  
12 percent. International sales accounted for 61 percent of the quarter’s revenue.

13 Services revenue reached an all-time high of \$10 billion. Excluding a one-time  
14 favorable adjustment of \$640 million recognized in the fourth quarter of fiscal 2017,  
15 Services revenue grew from \$7.9 billion in the fourth quarter of fiscal 2017 to \$10  
16 billion in the fourth quarter of fiscal 2018, an increase of 27 percent.

17 “We’re thrilled to report another record-breaking quarter that caps a tremendous  
18 fiscal 2018, the year in which we shipped our 2 billionth iOS device, celebrated the  
19 10th anniversary of the App Store and achieved the strongest revenue and earnings  
20 in Apple’s history,” said Tim Cook, Apple’s CEO. “Over the past two months, we’ve  
21 delivered huge advancements for our customers through new versions of iPhone,  
22 Apple Watch, iPad and Mac as well as our four operating systems, and we enter the  
23 holiday season with our strongest lineup of products and services ever.”

24 “We concluded a record year with our best September quarter ever, growing double  
25 digits in every geographic segment. We set September quarter revenue records for  
26 iPhone and Wearables and all-time quarterly records for Services and Mac,” said  
27 Luca Maestri, Apple’s CFO. “We generated \$19.5 billion in operating cash flow and  
28 returned over \$23 billion to shareholders in dividends and share repurchases in the  
September quarter, bringing total capital returned in fiscal 2018 to almost \$90  
billion.”

Apple is providing the following guidance for its fiscal 2019 first quarter:

- **revenue between \$89 billion and \$93 billion**
- gross margin between 38 percent and 38.5 percent
- operating expenses between \$8.7 billion and \$8.8 billion

- other income/(expense) of \$300 million
- tax rate of approximately 16.5 percent before discrete items

104. The data sheet listed iPhone sales of 46.9 million units during the fourth quarter 2018, which was flat year-over-year but up 14% from the prior sequential quarter. Revenues from iPhone sales were \$37.2 billion, accounting for approximately 59% of the Company's total quarterly revenues of \$62.9 billion. Revenues from total sales in Greater China were \$11.4 billion, or approximately 18% of total global revenues.

105. During a conference call with analysts held later that day, Defendant Cook started by discussing the newest iPhone releases and increased revenues from iPhone sales:

It was a big year and a big quarter for iPhone. Q4 revenue was up 29% over last year, an increase of over \$8 billion to a new September quarter record, fueled by continued momentum for iPhone 8, 8 Plus and 10 and the very successful launch of iPhone XS and iPhone XS Max.

These latest devices are our most advanced iPhones ever, with the industry's first 7 nanometer A12 Bionic chip with an Apple design 8-core neural engine capable of executing an astounding five trillion operations per second. The A12 Bionic is many years in the making and a huge technological leap forward. It sets the iPhone experience far apart from the competition, using real-time machine learning to transform the way we experienced photos, gaming, augmented reality and more. It makes full use of the dual camera system that shoots portrait mode photos with smart HDR and dynamic depth of field and Face ID is even faster. The response has been powerful.

As one reviewer put it, iPhone XS and XS Max are the perfect blend of design and craftsmanship as well as seamlessly intuitive user experience. We're not done yet. Just last week, we began shipping iPhone XR, bringing the latest iPhone breakthroughs to even more users with an all-screen glass and aluminum design and the most advanced LCD in a smartphone, the product reviews have been overwhelmingly mainly positive.

106. Analyst Michael Olson of Piper Jaffray & Co. questioned whether Defendant Cook had any concerns about the demand for the newly launched iPhone models, in light of their staggered launch with even newer models that were being released shortly. Defendant Cook stated that he did not have enough data to observe any demand issues.



1 107. Defendant Maestri revealed, for the first time, that, “starting in the December quarter,  
2 we will no longer be providing unit sales data for iPhone, iPad and Mac.” Defendant Maestri  
3 explained:

4 As demonstrated by our financial performance in recent years, the number of units  
5 sold in any 90-day period is not necessarily representative of the underlying strength  
6 of our business. Furthermore a unit of sale is less relevant for us today than it was in  
7 the past given the breadth of our portfolio and the wider sales price dispersion within  
any given product line.

8 108. In response to an analyst question about the reasons for the change in reporting unit  
9 sales data, Defendant Maestri added that, “of course, we understand that this is something of interest  
10 and when we believe that providing qualitative commentary on unit sales offers additional relevant  
11 information to investors, we will do so.”

12 109. Analyst Jim Suva of Citigroup asked Defendant Maestri whether the change in  
13 reporting unit sales data may be related to decreased iPhone demand that the Company does not  
14 want to disclose:

15 [T]here will probably be a lot of pushback about not giving iPhone unit data. It  
16 sounds like you're still going to give revenue data if I heard that correctly. ***But some***  
17 ***people may fear that this now means that the iPhone units are going to start going***  
***negative year-over-year because it's easy to talk about great things and not show***  
***the details of things that are so great.***

18 110. Defendant Maestri downplayed this concern and added that top end iPhone unit sales  
19 were “very strong” during the prior quarter:

20 I've given that the rationale and why we do not believe that providing unit sales is  
21 particularly relevant for our company at this point. ***I can reassure you that it is our***  
22 ***objective to grow unit sales for every product category that we have. But as I said***  
23 ***earlier, a unit of sale is less relevant today than it was in the past. To give you an***  
24 ***example, the unit sales of iPhone at the top end of the line have been very strong***  
25 ***during the September quarter.*** And that's very important because we are attracting  
26 customers to the most recent technologies and features and innovation, that we bring  
27 into the lineup. But you don't necessarily see that in the number that is reported. And  
28 so, therefore, we will -- as I said, we will provide the qualitative commentary, when  
it is important and relevant but at the end of the day, we make our decisions to --  
from a financial standpoint to try and optimize our revenue and our gross margin  
dollars and that we think is -- the focus that is in the best interest of our investors.

111. Defendant Cook added that per unit sales “doesn’t matter a lot” in terms of overall value of sales (even though it was a metric Apple had touted for numerous prior quarters and clearly shows consumer demand trends as distinguished from per unit pricing trends):

Our installed base is growing at double-digit and so there is no -- and that's probably a much more significant metric for us from a ecosystem point of view and the customer loyalty et cetera. The second thing is, this is a little bit like if you go to the market and you push your cart up to the cashier and she says or he says, how many units you have in there? *It's sort of, it doesn't matter a lot, how many units that are in there in terms of the overall value* of what's in the cart.

112. Defendant Maestri also discussed Apple’s revenue guidance for the next quarter, including explaining how Apple could “expect revenue to be between \$89 billion and \$93 billion, a new all-time record.” Defendant Maestri cited “a number of factors,” including the launch timing of new iPhones this year versus last year, almost \$2 billion of foreign exchange headwinds, and “an unprecedented number of products ramping up.” Apple released such record high revenue guidance despite the fact that, as Defendant Maestri acknowledged, the Company faced “some macroeconomic uncertainty, particularly in emerging markets” where “clearly consumer confidence is not as high as it was 12 months ago.”

113. Following up on the emerging markets uncertainty, analyst Wamsi Mohan of Bank of America Merrill Lynch noted that “there has been some *real deceleration* in some of these emerging markets, partly driven by some concerns around some of the rules, administration is contemplating and *partly driven by things that are more specific to China*,” and asked whether Defendant Cook could speak about how he saw the trajectory there for business.

114. Defendant Cook responded by acknowledging that some emerging markets, such as Turkey, India, Brazil, and Russia, were “seeing pressure” due to, among other things, weaker currencies and those markets “not growing the way we would like to see.” However, he downplayed any such issues for China, especially for iPhone sales:

In relation to China specifically, *I would not put China in that category*. Our business in China was very strong last quarter. We grew 16%, which we're very happy with. iPhone in particular was very strong. Very strong double-digit growth there. Our other products category was also stronger, in fact a bit stronger than even the company, overall company number.

115. Later, in response to another analyst's question about the ongoing trade negotiations among various countries and "broader geopolitical risk" presented by these disputes and potential negative effects on Apple's supply chain, Defendant Cook stated that: "I'm still of the mindset that I feel very optimistic and positive, the discussions are going to be fruitful" and "I'm optimistic that the countries in the U.S. and China and the U.S. and Europe and so forth can work these things out and work for the benefit of everyone."

116. The above statements were materially false and/or misleading because Defendants knew or recklessly disregarded that: (1) consumer demand for new iPhone models was negatively impacted by Apple's sales of discounted battery replacement program released in the wake of the throttling scandal, as customers chose not to upgrade or to delay same; (2) macroeconomic factors, including an escalating trade war with the United States, increased competition from cheaper smartphone makers in China, and a sluggish Chinese economy, were threatening Apple's iPhone sales in China and ability to maintain such high average selling prices per iPhone unit; and (3) as a result of the foregoing, the Defendants lacked a reasonable basis when issuing positive iPhone sales and revenue guidance for the first quarter of 2019, and when publicly denying the existence and negative impact of the foregoing.

### **THE TRUTH EMERGES**

117. On January 2, 2019, just two months after issuing its guidance for the fiscal year 2019 first quarter ended December 29, 2018, Defendant Cook issued a public letter to investors significantly revising down such guidance. In terms of revenue expectations, guidance decreased from the "all-time record" expectation of between \$89 billion and \$93 billion previously announced, to a mere \$84 billion, well below even the lower bound of the prior guidance range. Apple cited "fewer iPhone upgrades than we had anticipated."

118. As reasons for the decrease in iPhone sales and upgrades, Defendant Cook was finally forced to admit that macroeconomic weaknesses in emerging markets that he had previously dismissed for the Chinese market did indeed have a material impact there. These included a general slow-down in the Chinese economy, "rising trade tensions with the United States," and a *sharp "contraction in Greater China's smartphone market."* *"In fact, most of our revenue shortfall to*

1 *our guidance, and over 100 percent of our year-over-year worldwide revenue decline, occurred*  
 2 *in Greater China across iPhone, Mac and iPad.”*

3 119. Defendant Cook was also forced to finally admit that the discounted battery  
 4 replacement program had resulted in fewer consumers upgrading their older model iPhones.  
 5 *“iPhone upgrades also were not as strong as we thought they would be” because of, among other*  
 6 *things, “some customers taking advantage of significantly reduced pricing for iPhone battery*  
 7 *replacements.”* This was a key factor that Defendant Cook had previously been asked about  
 8 numerous times but had never acknowledged; indeed, going so far as to say Apple had never  
 9 considered this possibility. (One wonders how Apple could have issued revenue guidance with any  
 10 sense of authority without at least investigating this potential negative effect.)

11 120. Defendant Cook’s letter, which was appended as an exhibit to a Form 8-K filed with  
 12 the SEC that same date, stated:

13 **Letter from Tim Cook to Apple Investors**

14 CUPERTINO, California — January 2, 2019 — Apple® today issued the following  
 15 public letter to investors:

16 To Apple investors:

17 Today we are revising our guidance for Apple’s fiscal 2019 first quarter, which ended  
 18 on December 29. We now expect the following:

- 19 • *Revenue of approximately \$84 billion*
- 20 • Gross margin of approximately 38 percent
- 21 • Operating expenses of approximately \$8.7 billion
- 22 • Other income/(expense) of approximately \$550 million
- 23 • Tax rate of approximately 16.5 percent before discrete items

24 We expect the number of shares used in computing diluted EPS to be approximately  
 25 4.77 billion.

26 *Based on these estimates, our revenue will be lower than our original guidance for*  
 27 *the quarter, with other items remaining broadly in line with our guidance.*

1 While it will be a number of weeks before we complete and report our final results,  
2 we wanted to get some preliminary information to you now. Our final results may  
3 differ somewhat from these preliminary estimates.

4 ***When we discussed our Q1 guidance with you about 60 days ago, we knew the first***  
5 ***quarter would be impacted by both macroeconomic and Apple-specific factors.***  
6 Based on our best estimates of how these would play out, we predicted that we would  
7 report slight revenue growth year-over-year for the quarter. As you may recall, we  
8 discussed four factors:

9 First, we knew the different timing of our iPhone launches would affect our year-  
10 over-year compares. Our top models, iPhone XS and iPhone XS Max, shipped in  
11 Q4'18 — placing the channel fill and early sales in that quarter, whereas last year  
12 iPhone X shipped in Q1'18, placing the channel fill and early sales in the December  
13 quarter. We knew this would create a difficult compare for Q1'19, and this played  
14 out broadly in line with our expectations.

15 Second, we knew the strong US dollar would create foreign exchange headwinds and  
16 forecasted this would reduce our revenue growth by about 200 basis points as  
17 compared to the previous year. This also played out broadly in line with our  
18 expectations.

19 Third, we knew we had an unprecedented number of new products to ramp during  
20 the quarter and predicted that supply constraints would gate our sales of certain  
21 products during Q1. Again, this also played out broadly in line with our expectations.  
22 Sales of Apple Watch Series 4 and iPad Pro were constrained much or all of the  
23 quarter. AirPods and MacBook Air were also constrained.

24 ***Fourth, we expected economic weakness in some emerging markets. This turned***  
25 ***out to have a significantly greater impact than we had projected.***

26 ***In addition, these and other factors resulted in fewer iPhone upgrades than we had***  
27 ***anticipated.***

28 ***These last two points have led us to reduce our revenue guidance. I'd like to go a***  
***bit deeper on both.***

### **Emerging Market Challenges**

While we anticipated some challenges in key emerging markets, we did not foresee  
the magnitude of the economic deceleration, particularly in Greater China. In fact,  
***most of our revenue shortfall to our guidance, and over 100 percent of our year-***  
***over-year worldwide revenue decline, occurred in Greater China across iPhone,***  
***Mac and iPad.***

***China's economy began to slow in the second half of 2018. The government-***  
***reported GDP growth during the September quarter was the second lowest in the***  
***last 25 years. We believe the economic environment in China has been further***

*impacted by rising trade tensions with the United States. As the climate of mounting uncertainty weighed on financial markets, the effects appeared to reach consumers as well, with traffic to our retail stores and our channel partners in China declining as the quarter progressed. And market data has shown that the contraction in Greater China's smartphone market has been particularly sharp.*

Despite these challenges, we believe that our business in China has a bright future. The iOS developer community in China is among the most innovative, creative and vibrant in the world. Our products enjoy a strong following among customers, with a very high level of engagement and satisfaction. Our results in China include a new record for Services revenue, and our installed base of devices grew over the last year. We are proud to participate in the Chinese marketplace.

### **iPhone**

*Lower than anticipated iPhone revenue, primarily in Greater China, accounts for all of our revenue shortfall to our guidance and for much more than our entire year-over-year revenue decline.* In fact, categories outside of iPhone (Services, Mac, iPad, Wearables/Home/Accessories) combined to grow almost 19 percent year-over-year.

While Greater China and other emerging markets accounted for the vast majority of the year-over-year iPhone revenue decline, in some developed markets, iPhone upgrades also were not as strong as we thought they would be. While macroeconomic challenges in some markets were a key contributor to this trend, we believe there are other factors broadly impacting our iPhone performance, including consumers adapting to a world with fewer carrier subsidies, US dollar strength-related price increases, and *some customers taking advantage of significantly reduced pricing for iPhone battery replacements . . . .*

121. On January 3, 2019, *Axios* published an article entitled, "The Chinese Role in Apple's Seismic iPhone Warning," which noted that "Apple's iPhone problems extend far beyond China" and include decreased upgrade demand due to the discounted battery replacement program:

There was a collective thud Wednesday as Apple warned that its holiday quarter revenue would fall billions short of expectations amid exceptionally weak business in China.

**The backdrop:** There are two important factors to consider when trying to make sense of the news: *The problems Apple saw in China go far beyond just Apple. But Apple's iPhone problems extend far beyond China, too.*

**On China:** The Chinese economy is weak and perhaps weaker than previously realized. This is probably the biggest takeaway from the news.



- Apple CEO Tim Cook said that weakness in Greater China (which Apple defines as China, Taiwan and Hong Kong) accounted for nearly all of the company's revenue miss (though it did see other pockets of weakness).
- Some of that was likely share picked up by other smartphone makers, but it also suggests significant slowness in the Chinese economy, particularly at the high end of the market.

**On iPhone:** While things were especially bad in China, Apple saw weak iPhone demand in other places, too.

- *Apple blamed a range of factors, from currency exchange rates to people choosing a discounted battery replacement for their old phone rather than buying a new iPhone.*
- All of those points are likely valid, but miss the fundamental issue: the smartphone market has matured. *People are happy with a battery upgrade because they are generally happy with their phone.*
- This is problematic for Apple not just because the iPhone generates the bulk of company revenue and profits, but also because Apple tends to do best when innovation is rapid rather than incremental.

What they're saying:

- **Apple CEO Tim Cook:** "While we anticipated some challenges in key emerging markets, we did not foresee the magnitude of the economic deceleration, particularly in Greater China."
- **Bloomberg's Shira Ovide** wrote an article, headlined "Apple's iPhone warning comes years too late," saying that *Apple missed clear warning signs that the smartphone business was slowing down.* "This should have been absolutely predictable to anyone who was able to peer outside of Apple's bubble."
- **The Verge's Tom Warren:** "I think Apple is hitting a difficult iPhone period. People are upgrading less, carrier subsidies aren't enough, and \$1,000 phones are making consumers pause and consider. Mix that in with fears of a recession, and 2019 could be challenging for Apple and many others."

**What's next:** Apple will report full results at the end of the month and will likely go into greater detail.

- Meanwhile, we will also hear from other smartphone makers as well as others with big business in China.

- That should help show how much of Apple's experience was universal and how much it was uniquely its own.

122. On this news, the Company's share price fell approximately 9%, from \$157.92 on January 2, 2019 to \$142.19 on January 3, 2019, on exceedingly high trading volume of over 91 million shares.

123. On January 4, 2019, *The New York Times* published an article entitled, "Is This the End of the Age of Apple?" Shortly thereafter, analyst Daniel Ives of Wedbush Securities stated in a CNBC interview that these were the "darkest days" for Apple:

Right now, time is ticking, and [Apple's] back is against the wall and they are going to have to make some serious strategic decisions for the Company. And I think right now, for [Tim] Cook to emerge from what I view as the ***darkest day for Apple in the modern iPhone era***, it's going to be about [Apple focusing on providing] services, and it's going to be about ***price cuts on the [iPhone] XR, especially in China.***"

124. During an interview with Jim Cramer, Defendant Cook was asked about issues with the Chinese economy and whether the "naysayers" were right. Cook responded by conceding that the Chinese economic issues were real, but he dismissed any concerns about long-lasting impacts in China, or the notion that the iPhone XR was not selling well:

Well, I think here's what we saw in China. the Chinese economy, it seemed to us, began to slow, maybe, in the second half of the year. And it was on some sort of rational trajectory. We believe, based on what we saw and the timing of it, that the tension, the trade-war tension with the U.S. created this more-sharp downturn.

I believe that's temporary. Because I think that, when you really look at it, it's in both countries' best interests to come to an agreement. It is a complex, very complex trade agreement. And it needs to be updated. But as I've said before, I'm very optimistic that this will happen. And so that clearly will be good, not only for us, frankly, but I think more about the world in general. The world needs a strong U.S. and China economy for the world economy to be strong.

\* \* \*

[As to people who say the XR flopped and Apple is in its "darkest days,"] I say bologna. I call bologna on that. Let me tell you how I view this. Here's the truth, what the facts are. Since we began shipping the iPhone XR, it has been the most popular iPhone every day, every single day, from when we started shipping, until now.





1 launch date of iPod, as well, and, you know, where all of them have a comparable  
2 amount of time, you would find that each one, independently, is, like, four to six  
times ahead of where iPod was at a comparable period of time.

3 ***And so AirPods are becoming ubiquitous out there. People love them.*** I get notes  
4 every day. They're chock full of tech. But they just work. It's the elegance of them,  
but with significant technology and built right in and an unbelievable user interface.

5 127. Addressing the discounted battery program's negative effect on upgrades and newer  
6 iPhone sales, Cook stated that "if somebody decides to buy an iPhone a little later, because of the  
7 battery, huge discount that we gave, they decide to hold on a little longer, I'm great with that." He  
8 stated that investors were misguided in focusing on "how many iPhones are sold in a given 90-day  
9 period or what the revenue is."

10 128. On January 29, 2019, Apple issued a press release regarding its financial results for  
11 its fiscal year 2019 first quarter ended December 29, 2018, which was appended as an exhibit to a  
12 Form 8-K filed with the SEC that same day. During the first quarter, Apple reported a 5% decline  
13 in year-over-year revenue, just above the lower bound of its revised guidance range, of \$84 billion.  
14 Revenue from iPhone sales declined 15% from the prior year. Apple also provided revenue guidance  
15 for the upcoming quarter of \$55 billion to \$59 billion.

16 129. The press release stated, in pertinent part:

17 The Company posted quarterly revenue of \$84.3 billion, a decline of 5 percent from  
18 the year-ago quarter, and quarterly earnings per diluted share of \$4.18, up 7.5  
19 percent. International sales accounted for 62 percent of the quarter's revenue.

20 Revenue from iPhone® declined 15 percent from the prior year, while total revenue  
21 from all other products and services grew 19 percent. Services revenue reached an  
22 all-time high of \$10.9 billion, up 19 percent over the prior year. Revenue from Mac®  
and Wearables, Home and Accessories also reached all-time highs, growing 9  
percent and 33 percent, respectively, and revenue from iPad® grew 17 percent.

23 "While it was disappointing to miss our revenue guidance, we manage Apple for the  
24 long term, and this quarter's results demonstrate that the underlying strength of our  
25 business runs deep and wide," said Tim Cook, Apple's CEO. "Our active installed  
26 base of devices reached an all-time high of 1.4 billion in the first quarter, growing in  
27 each of our geographic segments. That's a great testament to the satisfaction and  
loyalty of our customers, and it's driving our Services business to new records thanks  
to our large and fast-growing ecosystem."

1 “We generated very strong operating cash flow of \$26.7 billion during the December  
 2 quarter and set an all-time EPS record of \$4.18,” said Luca Maestri, Apple’s CFO.  
 3 “We returned over \$13 billion to our investors during the quarter through dividends  
 4 and share repurchases. Our net cash balance was \$130 billion at the end of the  
 5 quarter, and we continue to target a net cash neutral position over time.”

6 130. A quarterly report filed with the SEC on Form 10-Q the next day listed revenues  
 7 from iPhone sales of \$52.0 billion, representing a 15% decline year-over-year, even as revenues for  
 8 every other product segment saw significant increases. Revenues from sales in China declined 27%  
 9 year-over-year, “primarily due to lower iPhone net sales.”

10 131. Following these revelations, securities fraud class actions were filed against the  
 11 Company, Cook, and Maestri in relation to the misstatements described herein. These actions have  
 12 been consolidated in the Northern District of California, as *In re Apple Inc. Securities Litigation*,  
 13 4:19-cv-02033-YGR (N.D. Cal.).

#### 14 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

15 132. Plaintiff brings this action derivatively in the right and for the benefit of the Company  
 16 to redress injuries suffered and to be suffered as a direct and proximate result of the breaches of  
 17 fiduciary duties and gross mismanagement by the Director Defendants.

18 133. Plaintiff will adequately and fairly represent the interests of Apple in enforcing and  
 19 prosecuting its rights and has retained counsel competent and experienced in derivative litigation.

20 134. Plaintiff is a current owner of the Company stock and has continuously been an  
 21 owner of Company stock during all times relevant to the Director Defendants’ wrongful course of  
 22 conduct alleged herein. Plaintiff understands his obligation to hold stock throughout the duration of  
 23 this action and is prepared to do so.

24 135. During the illegal and wrongful course of conduct at the Company and through the  
 25 present, the Board consisted of the Director Defendants. Because of the facts set forth throughout  
 26 this Complaint, demand on the Company Board to institute this action is not necessary because such  
 27 a demand would have been a futile and useless act.

28 136. The Company Board is currently comprised of seven (7) members – Cook, Levinson,  
 Bell, Gore, Jung, Sugar, and Wagner. Thus, Plaintiff is required to show that a majority of the

1 Director Defendants, *i.e.*, four (4), cannot exercise independent objective judgment about whether  
2 to bring this action or whether to vigorously prosecute this action.

3 137. The Director Defendants either knew or should have known of the false and  
4 misleading statements that were issued on the Company's behalf and took no steps in a good faith  
5 effort to prevent or remedy that situation.

6 138. Each of the Director Defendants approved and/or permitted the wrongs alleged  
7 herein to have occurred, and participated in efforts to conceal or disguise those wrongs from the  
8 Company's stockholders or recklessly and/or with gross negligence disregarded the wrongs  
9 complained of herein and are therefore not disinterested parties.

10 139. Each of the Director Defendants authorized and/or permitted the false statements to  
11 be disseminated directly to the public and made available and distributed to shareholders, authorized  
12 and/or permitted the issuance of various false and misleading statements, and are principal  
13 beneficiaries of the wrongdoing alleged herein, and thus, could not fairly and fully prosecute such  
14 a suit even if they instituted it.

15 140. Additionally, each of the Director Defendants received payments, benefits, stock  
16 options (discussed above), and other emoluments by virtue of their membership on the Board and  
17 their control of the Company.

18 **The Director Defendants Are Not Independent or Disinterested**

19 **Defendant Cook**

20 141. Defendant Cook is not disinterested or independent. He is incapable of considering  
21 a demand because, as Apple's CEO, Cook derives substantially all his wealth and livelihood from  
22 his relationship with the Company.

23 142. Defendant Cook has also been named as a defendant in a class action securities fraud  
24 lawsuit for his alleged role in the misconduct described herein. He cannot independently consider  
25 any demand to sue himself for breaching his fiduciary duties to Apple and its shareholders, as that  
26 would expose him to substantial liability.

27 143. Additionally, Apple acknowledged that Cook is not independent in its 2019 DEF  
28 14A (and in prior definitive proxy statements filed by the Company).

**Defendants Levinson, Bell, Sugar, and Wagner**

144. During the Relevant Period, Defendants Levinson, Bell, Sugar, and Wagner served as members of the Audit and Finance Committee. Pursuant to the Audit and Finance Committee's Charter, its members are responsible for, *inter alia*, ensuring the accuracy of Apple's financial statements and other financial information provided by Apple to its shareholders and others; overseeing Apple's compliance with legal, regulatory, and public disclosure requirements; monitoring Apple's independent auditors; enforcing Apple's systems of internal controls, including the internal audit function; overseeing treasury and finance matters; reviewing enterprise risk management, privacy, and data security; and monitoring the auditing, accounting, and financial reporting process generally. They are also responsible monitoring "Apple's significant business risks, including financial; operational; privacy; data security; business continuity; legal; regulatory; and reputational risks."

145. These defendants breached their fiduciary duties of due care, loyalty, and good faith because they, *inter alia*, allowed or permitted false and misleading statements to be disseminated in the Company's SEC filings and other disclosures and, otherwise, failed to ensure that adequate internal controls were in place regarding the disclosure issues and other deficiencies described above. They also failed to monitor the significant business and reputational risks facing Apple, both that existed and should have been revealed to investors, and that were newly created by the failed revelations. Therefore, these defendants face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile.

**Defendants Gore and Jung**

146. During the Relevant Period, Defendants Gore and Jung (and Iger before he left the Board) served as members of the Board's Nominating and Corporate Governance Committee. Pursuant to the Nominating and Corporate Governance Committee's Charter, its members are responsible for, *inter alia*, assisting the Board in identifying qualified individuals to become directors; making recommendations to the Board concerning the size, structure, and composition of the Board and its committees; and overseeing and making recommendations regarding corporate governance matters.

147. These defendants are responsible for the current composition of the Board, including that of Defendant Cook, who is subject to liability for securities fraud in relation to the allegations described herein. These defendants have known about such potential liability for months, at least, yet have taken no actions against Defendant Cook. Their refusal to hold him accountable demonstrates that making a demand upon them based on the same alleged wrongdoing would be a futile and useless act.

148. Defendants Gore and Jung (and Iger before he left the Board) also served as members of the Board's Compensation Committee. Pursuant to the Compensation Committee's Charter, its members are responsible for, *inter alia*, reviewing and approving the compensation arrangements for the CEO, Apple's other executive officers, and the Board; and administering Apple's equity compensation plans.

149. These defendants breached their fiduciary duties of due care, loyalty, and good faith because they, *inter alia*, approved substantial compensation packages for Defendants Cook and Maestri (as well as for the other members of the Board, including themselves). Defendants Cook and Maestri, in particular, were responsible for making many of the false and/or misleading statements discussed herein and which have exposed them to substantial liability, including as named defendants in securities fraud lawsuits. This exposes them to substantial liability, including for waste of corporate assets, which makes a demand upon them futile.

**Defendants Levinson, Bell, Sugar, and Wagner**

150. During the Relevant Period, Defendants Levinson, Bell, Sugar, and Wagner served as members of the Audit and Finance Committee. Pursuant to the Audit and Finance Committee's Charter, its members are responsible for, *inter alia*, ensuring the accuracy of Apple's financial statements and other financial information provided by Apple to its shareholders and others; overseeing Apple's compliance with legal, regulatory, and public disclosure requirements; monitoring Apple's independent auditors; enforcing Apple's systems of internal controls, including the internal audit function; overseeing treasury and finance matters; reviewing enterprise risk management, privacy, and data security; and monitoring the auditing, accounting, and financial reporting process generally.

151. These defendants breached their fiduciary duties of due care, loyalty, and good faith because they, *inter alia*, allowed or permitted false and misleading statements to be disseminated in the Company's SEC filings and other disclosures and, otherwise, failed to ensure that adequate internal controls were in place regarding the disclosure issues and other deficiencies described above. Therefore, these defendants face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile.

**All Director Defendants**

152. According to the 2019 DEF 14A, the Director Defendants, as Board members, were all tasked with "evaluating the executive team's management of the various risks confronting Apple."

The Board believes that evaluating the executive team's management of the various risks confronting Apple is one of its most important areas of oversight. In carrying out this critical responsibility, the Board has designated the Audit Committee with primary responsibility for overseeing enterprise risk management.

\* \* \*

While the Audit Committee has primary responsibility for overseeing enterprise risk management and reports regularly to the Board, the other Board committees also consider risks within their areas of responsibility and apprise the Board of significant risks and management's response to those risks. For example, the Nominating Committee reviews legal and regulatory compliance risks as they relate to Apple's corporate governance structure and processes, and the Compensation Committee reviews risks related to compensation matters. While the Board and its committees oversee risk management strategy, management is responsible for implementing and supervising day-to-day risk management processes and reporting to the Board and its committees.

153. Thus, all Director Defendants breached their fiduciary duties by failing to adequately evaluate the significant risks confronting Apple, which should have but were not disclosed to investors. They face liability for these failures, which renders making a demand upon them futile.



**COUNT I**

**Against the Director Defendants for Breach of Fiduciary Duty**

154. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

155. The Director Defendants owe the Company fiduciary obligations. By reason of their fiduciary relationships, the Director Defendants owed and owe the Company the highest obligation of good faith, fair dealing, loyalty, and due care.

156. The Director Defendants violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, and good faith.

157. The Director Defendants engaged in a sustained and systematic failure to properly exercise their fiduciary duties. Among other things, the Director Defendants breached their fiduciary duties of loyalty and good faith by allowing the Company to improperly misrepresent the Company's future business prospects and risks to revenues and sales, as alleged herein. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

158. As a direct and proximate result of the Director Defendants' failure to perform their fiduciary obligations, the Company has sustained significant damages. As a result of the misconduct alleged herein, the Director Defendants are liable to the Company.

159. As a direct and proximate result of the Director Defendants' breach of their fiduciary duties, the Company has suffered damage, not only monetarily, but also to its corporate image and goodwill. Such damage includes, among other things, costs associated with defending securities lawsuits, severe damage to the share price of the Company, resulting in an increased cost of capital, and reputational harm.

**COUNT II**

**Against the Director Defendants for Gross Mismanagement**

160. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.



1 161. By their actions alleged herein, the Director Defendants, either directly or through  
2 aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard  
3 to prudently managing the assets and business of the Company in a manner consistent with the  
4 operations of a publicly held corporation.

5 162. As a direct and proximate result of the Director Defendants' gross mismanagement  
6 and breaches of duty alleged herein, the Company has sustained significant damages in excess of  
7 hundreds of millions of dollars.

8 163. Because of the misconduct and breaches of duty alleged herein, the Director  
9 Defendants are liable to the Company.

### 10 **COUNT III**

#### 11 **Against the Director Defendants for Waste of Corporate Assets**

12 164. Plaintiff incorporates by reference and realleges each and every allegation contained  
13 above, as though fully set forth herein.

14 165. The wrongful conduct alleged regarding the issuance of false and misleading  
15 statements was continuous, connected, and on-going throughout the Relevant Period, and resulted  
16 in ongoing harm to the Company.

17 166. As a result of the misconduct described above, the Director Defendants wasted  
18 corporate assets by, *inter alia*: (i) refusing to account for material risks to sales of iPhones, both at  
19 home and abroad; (ii) paying excessive compensation, bonuses, and termination payments to certain  
20 of its executive officers; (iii) awarding self-interested stock options to certain officers and directors;  
21 and (iv) incurring potentially millions of dollars of legal liability and/or legal costs to defend  
22 Defendants' unlawful actions.

23 167. As a result of the waste of corporate assets, the Director Defendants are liable to the  
24 Company.

25 168. Plaintiff, on behalf of Apple, has no adequate remedy at law.

COUNT IV

**Against the Defendants for Violations of Section 10(b)  
of the Exchange Act and SEC Rule 10b-5**

169. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

170. During the Relevant Period, the Defendants disseminated or approved public statements that failed to disclose, *inter alia*: (a) that consumer demand for new iPhone models was negatively impacted by Apple's sales of heavily discounted battery replacements for older iPhone models, as customers chose not to upgrade or to delay same; (b) that macroeconomic factors, including an escalating trade war with the United States, increased competition, and a sluggish economy, were causing Apple's iPhone sales in China to plummet; and (c) that as a result of the foregoing, the Defendants lacked a reasonable basis when issuing positive iPhone sales and revenue guidance for the first quarter of 2019, and when publicly denying the existence and negative impact of the foregoing.

171. Thus, the price of the Company's shares was artificially inflated due to the deception of the Defendants.

172. As such, the Defendants caused the Company to violate section 10(b) of the Exchange Act and SEC Rule 10b-5 in that they:

- (a) employed devices, schemes, and artifices to defraud; and
- (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

173. As a result of the Defendants' misconduct, the Company is suffering litigation expense and reputational harm in the marketplace in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

(A) Declaring that Plaintiff may maintain this action on behalf of the Company and that Plaintiff is an adequate representative of the Company;

1 (B) Finding Defendants liable for breaching their fiduciary duties owed to the Company;

2 (C) Directing Defendants to take all necessary actions to reform and improve the  
3 Company's corporate governance, risk management, and internal operating procedures to comply  
4 with applicable laws and to protect the Company and its stockholders from a repeat of the rampant  
5 wrongful conduct described herein;

6 (D) Awarding Plaintiff the costs and disbursements of this action, including attorneys',  
7 accountants', and experts' fees; and

8 (E) Awarding such other and further relief as is just and equitable.

9 **JURY TRIAL DEMANDED**

10 Plaintiff hereby demands a trial by jury.

11 Dated: December 18, 2019

12 **BRODSKY & SMITH, LLC**

13  
14 By: 

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